

that the debt is past due and legally enforceable (see § 17.152);

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the debtor that inspection and copying are requested. (See § 17.155.)

[51 FR 39750, Oct. 31, 1986, as amended at 67 FR 47435, July 18, 2002]

**§ 17.152 Review within the Department of a determination that an amount is past-due and legally enforceable.**

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. The debtor should send a copy of the Notice of Intent with a letter notifying the HUD Board of Contract Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence. (See § 17.161(a) for address of the Board.) Failure to give this advance notice will not jeopardize the debtor's right to present evidence within the 65 days provided for in paragraph (b) of this section. If the HUD Board of Contract Appeals has additional procedures governing the review process, a copy of the procedures will be mailed to the debtor after his request for review is received and docketed by the Board.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification requested by paragraph (a) of this section, but in any event the evidence must be submitted to the Board of Contract Appeals within 65 calendar days from the date of the Department's Notice of Intent. Failure to submit evidence within 65 calendar days will result in a dismissal of the request for review by the HUD Board of Contract Appeals.

(c) *Review of the record.* After a timely submission of evidence by the debtor, an Administrative Judge from the HUD Board of Contract Appeals will review the evidence submitted by the De-

partment which shows that all or part of the debt is past-due and legally enforceable. (Administrative Judges are appointed in accordance with 41 U.S.C. 607(b)(1)). The Administrative Judge shall make a determination based upon a review of the written record, except that the Administrative Judge may order an oral hearing if he or she finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

(d) *Previous decision by Board of Contract Appeals.* The debtor is not entitled to a review of the Department's intent to offset it, in a previous year the HUD Board of Contract Appeals has issued a decision on the merits that the debt is past-due and legally enforceable, *except* when the debt has become legally unenforceable since the issuance of that decision, or the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable.

**§ 17.153 Determination of the Administrative Judge.**

(a) Following the hearing or the review of the record, the Administrative Judge shall issue a written decision which includes the supporting rationale for the decision. The decision of the Administrative Judge concerning whether a debt or part of a debt is past-due and legally enforceable is the final agency decision with respect to the past-due status and enforceability of the debt.

(b) Copies of the Administrative Judge's decision will be distributed to the General Counsel of the Department, the Department's Office of Finance and Accounting, the debtor, and the debtor's attorney or other representative, if any.

(c) If the Administrative Judge's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the Department of the Treasury after the Administrative Judge's determination has been issued under paragraph (a) of this